

Battaglia, Frank

From: Joseph F Guarnaccia <joseph.guarnaccia@basf.com>
Sent: Sunday, June 25, 2017 12:59 PM
To: kelly.owens.dem.ri.gov
Cc: Battaglia, Frank; Rick Kowalski; Barbara Hicks
Subject: Cranston RCRA
Attachments: SOB 052016.pdf; SOB pub presentation.pdf; Cranston RCRA Lot 1102 Remedy_060617 draft.docx

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Kelly,

I know you and Frank have been discussing the RCRA closure remedy, and I am trying to get into the loop so that I am fully knowledgeable about the regulatory requirements from both the EPA and the DEM. Currently I have no idea where this project is with respect to regulatory requirements and/or expectations (apparently nothing has been approved).

I request a meeting with you as soon as possible to discuss the material in this email. I am available for a meeting on Wednesday afternoon 6/28 at 3 or Thursday morning, 6/29 at 10. If you can accommodate me one of those times, great, else please provide me with your availability.

To be clear BASF expects to follow the RCRA First approach for project design.

<https://www.epa.gov/hw/toolbox-corrective-action-resource-conservation-and-recovery-act-facilities-investigation-remedy>

Specifically,

- Enhance communication between BASF, the EPA and the DEP.
- Formalize an understanding of remedy objectives.
- Promote the principle of "done right the first time" and avoids re-do loops.
- Facilitate critical decision-making through rapid elevation to resolve disputes.
- Stay within the technical and regulatory framework of the corrective action program

Without a clear set of rules, BASF cannot proceed with its design. Thus, a meeting with you is necessary so that BASF can fully understand DEM requirements and incorporate them into the RAWP.

Background.

- BASF acquired Ciba 2009
- BASF conducted a site investigation from 2010 to 2016 culminating in a CMS and a SOB 5/2016 (attached)
- RIDEM was copied on all EPA deliverables (site investigation reports, CMS, SOB). Aural affirmative commentary only.
- In May 2016, as part of the public comment period, EPA held a public meeting, which DEM attended.
- As per the SOB, the remedy for the former production area is :
 - remediate the PCB contamination to support a high occupancy cap (remediate to less than 10ppm and soil cover all remaining that is >1ppm. This satisfies TSCA, and it exceeds RIDEM residential criteria.
 - The cap will be landscaped and contoured to support an enhanced native upland habitat.
 - An ELUR will be imposed that requires only open space use in perpetuity. As with the ELUR, an annual monitoring plan to DEM is required. This is on top of an EPA-required O&M plan.



- By definition, this remedy does not require a fence or signage, and it will support the potential for use as a public park.
- The remedy is consistent with BASF's sustainability metrics and it addresses the requirements and/or needs of all the stakeholders, including EPA, DEM, residents, city. The remedy attempts to put the property back into productive use in the community.
- Public comments received focused on traffic (lots of trucks coming and going). The concept of a public park was received with enthusiasm, including residents, council member Stykos and NGOs (PRA and another I do not remember).
- To date DEM has not responded in writing to the SOB.
- Based on public comment and now-realized design considerations, because of constraints inherent with the property (all subsurface foundations remain in place), because of public traffic concerns, and consideration of sustainability metrics (carbon footprint, landfill volume), given BASF's understanding of both the State and Federal regulations, it became clear to BASF that a remedy modification can and should be implemented that will be fully protective of human health and the environment, and provide compliance with both TSCA and DEM regulations. Specifically, without significant effort, it is not practical to remove all PCB >10ppm (soils in and around foundations leads to feasibility issues), and a completely protective remedy involving a fraction of truck traffic and landfill volume use can be achieved by backing off on the soils to be removed and conducting a HHRA for risk quantification. To this end, the attached remedy outline was presented to EPA, where PCB >25ppm would be removed, remaining soil average would be < 10ppm, and an engineered cap would be placed on the property (eliminate direct contact), and a HHRA would be conducted to show that HH risk is de minimis.
- I was recently told by the DEM case manager, something to the effect: I do not care how much you remediate the property, because of its industrial history I will never allow it to be considered for public use, and it must be fenced in perpetuity. In addition, the DEM case manager cited supposed DEM regulations to Frank, something to the effect that because PCB concentrations are in excess of 50 ppm, the property can never apply for public access, and it must be fenced in perpetuity. In addition, the DEM case manager cited regulation that properties with a long industrial past cannot be used for public use. I have combed through DEM remedial regulations, and I find no reference to these requirements. BASF cannot accept a fear-based opinion as the basis for remedial action.

I find it remarkable and unacceptable that 1 year after publication of the SOB, the remedy has no teeth, no regulatory basis. In fact, Frank has told me that DEM has not yet commented on the SOB, and as such it may change based on eventual DEM commentary. When does DEM intend to comment? As such, nothing from a design and reuse point of view is determined. RCRA First is useless.

At this point BASF is uncertain as to whether

1. the property will ever be suitable for public use
2. the remedy can be completed w/o a fence and signage (regardless whether the public is ever invited).

If EPA and/or DEM insist that regardless of the level of remedial action (RA), the site must be fenced, then BASF needs to reconsider the RA. It makes no sense to prepare the site for potential public use that will never occur. Thus, BASF will submit a remedy change supported by public and regulator comment on the SOB. BASF will hold a public meeting and state its case as such. To be clear, this is not about money. It is about meeting stakeholder needs and sustainability. BASF has a strong sustainability position. It does not want to put a fence around the property and walk away. However, the business cannot justify spending for an outcome that will never occur.

Please indicate your availability for a meeting at your earliest convenience, and I will make every effort to meet you at your office. The soonest this can occur the better. Sadly, the plan to implement the remedy this construction season is evaporating fast. At a minimum, whether we have a meeting or not, DEM must provide a written statement of its rules and regulations relevant to this project. Given that statement, BASF will engage EPA in developing a RAWP that will meet both regulatory platforms.

Thank you for considering this request.

Sincerely
Joe

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